

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

**SANDRA KAY FLIPPO-BYROM V. STATE OF TENNESSEE**

**Appeal from the Circuit Court for Lincoln County**  
**No. S0500133     Jerry Scott, Senior Judge**

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**No. M2005-02975-CCA-R3-PC - Filed August 30, 2006**

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This matter is before the Court upon the State's motion to affirm the judgment of the habeas corpus court by memorandum opinion pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. The petitioner has appealed the habeas corpus court's order dismissing the petition for writ of habeas corpus. Upon a review of the record in this case, we are persuaded that the habeas corpus court was correct in dismissing the habeas corpus petition and that this case meets the criteria for affirmance pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. Accordingly, the State's motion is granted and the judgment of the habeas corpus court is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Trial Court is Affirmed.**

JERRY L. SMITH, J., delivered the opinion of the court, in which DAVID H. WELLES, and ROBERT W. WEDEMEYER, JJ., joined.

Andrew Jackson Dearing, Shelbyville, Tennessee, for the appellant, Sandra Kay Flippo-Byron.

Paul G. Summers, Attorney General & Reporter; David Edward Coenen, Assistant Attorney General, for the appellee, State of Tennessee.

**MEMORANDUM OPINION**

On November 6, 2001, the petitioner pled guilty to fourth offense of driving under the influence, identity theft, and driving after being declared a motor vehicle habitual offender. Pursuant to the plea agreement, the petitioner was sentenced to two years for the DUI, four years for identity theft, and two years for driving after being declared a motor vehicle habitual offender. The trial court ordered the DUI sentence and the identity theft sentence to be served consecutively. The trial court ordered the motor vehicle habitual offender sentence to be served concurrently to the other two sentences. Also pursuant to the plea agreement, the petitioner was sentenced as a Range II multiple offender. The petitioner did not appeal these convictions. On May 3, 2005, the petitioner filed a

“Petition for Writ of Habeas Corpus or in the alternative Petition for Post Conviction Pursuant to TCA § 40-30-202(b)(1)” in the Circuit Court of Lincoln County, which was the last court of conviction. The petition stated that the petitioner was “serving an illegal sentence in violation of Blakely v. Washington, 124 S.Ct. 2531 (June 2004).” The State filed a motion to dismiss based upon several procedural reasons. On August 10, 2005, the petitioner, through counsel, filed an “Amended Petition for Post-Conviction Relief.” This Amended Petition did not amend the petitioner’s Petition for Writ of Habeas Corpus.

On November 22, 2005, the Honorable Jerry Scott, Senior Judge, sitting in the Lincoln County Circuit Court, held a hearing on the petitioner’s petition. At the hearing, the State also moved to dismiss the petitioner’s petition because she had been released from custody and was on parole. At the conclusion of the hearing, the habeas corpus court dismissed the petition because the petition for post-conviction relief was time-barred and the judgment was not void. The petitioner filed a timely notice of appeal. In her brief, the petitioner argues only that the habeas corpus court should not have dismissed her petition for writ of habeas corpus. She does not argue about the habeas corpus court’s conclusion that the petition for post-conviction relief was time-barred.

### **Analysis**

The determination of whether to grant habeas corpus relief is a question of law. See McLaney v. Bell, 59 S.W.3d 90, 92 (Tenn. 2001). As such, we will review the habeas corpus court’s findings de novo without a presumption of correctness. Id. Moreover, it is the petitioner’s burden to demonstrate, by a preponderance of the evidence, “that the sentence is void or that the confinement is illegal.” Wyatt v. State, 24 S.W.3d 319, 322 (Tenn. 2000).

Article I, section 15 of the Tennessee Constitution guarantees an accused the right to seek habeas corpus relief. See Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). A writ of habeas corpus is available only when it appears on the face of the judgment or the record that the convicting court was without jurisdiction to convict or sentence the defendant or that the defendant is still imprisoned despite the expiration of his sentence. Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993); Potts v. State, 833 S.W.2d 60, 62 (Tenn. 1992). In other words, habeas corpus relief may be sought only when the judgment is void, not merely voidable. See Taylor, 995 S.W.2d at 83. “A void judgment ‘is one in which the judgment is facially invalid because the court lacked jurisdiction or authority to render the judgment or because the defendant’s sentence has expired.’ We have recognized that a sentence imposed in direct contravention of a statute, for example, is void and illegal.” Stephenson v. Carlton, 28 S.W.3d 910, 911 (Tenn. 2000) (quoting Taylor, 955 S.W.2d at 83).

The procedural requirements for habeas corpus relief are mandatory and must be scrupulously followed. Hickman v. State, 153 S.W.3d 16, 19-20 (Tenn. 2004); Archer, 851 S.W.2d at 165. For the benefit of individuals such as the petitioner, our legislature has explicitly laid out the formal requirements for a petition for a writ of habeas corpus at Tennessee Code Annotated section 29-21-107:

(a) Application for the writ shall be made by petition, signed either by the party for whose benefit it is intended, or some person on the petitioner's behalf, and verified by affidavit.

(b) The petition shall state:

(1) That the person in whose behalf the writ is sought, is illegally restrained of liberty, and the person by whom and place where restrained, mentioning the name of such person, if known, and, if unknown, describing the person with as much particularity as practicable;

(2) The cause or pretense of such restraint according to the best information of the applicant, and if it be by virtue of any legal process, a copy thereof shall be annexed, or a satisfactory reason given for its absence;

(3) That the legality of the restraint has not already been adjudged upon a prior proceeding of the same character, to the best of the applicant's knowledge and belief; and

(4) That it is the first application for the writ, or, is a previous application has been made, a copy of the petition and proceedings thereon shall be produced, or satisfactory reasons be given for the failure so to do.

"A habeas corpus court may properly choose to dismiss a petition for failing to comply with the statutory procedural requirements." Hickman, 153 S.W.3d at 21.

The petitioner's petition for a writ of habeas corpus does not meet the mandatory statutory requirements. The State argues that the petitioner filed her petition in the wrong court. The petitioner filed her petition in the Lincoln County Circuit Court, but she was incarcerated at the Mark Luttrell Correctional Center in Memphis, Shelby County, Tennessee. The State also argues that the petitioner failed to state that the legality of the restraint had already been adjudged upon a prior proceeding of the same character. In addition, the State argues that the petitioner fails to state a colorable claim for habeas corpus relief, because in her brief she argues that she was afforded ineffective assistance of counsel and entered an involuntary guilty plea.

We have reviewed the record and find that the petitioner did file her petition in the wrong court. She does not offer any reasons for filing in a court other than one that is closest in distance, as provided in Tennessee Code Annotated section 29-21-105. The State is also correct in that the petitioner does not state in her petition whether the legality of the restraint had already been adjudged upon. Such a statement is a mandatory requirement under Tennessee Code Annotated section 29-21-107(b)(3). She does include in her affidavit that the Lincoln County Circuit Court had previously

dismissed her motion to correct an illegal sentence. However, she did not include this information in the actual petition.

The petitioner's claims of ineffective assistance of counsel and involuntary guilty plea are not a colorable claim for habeas corpus relief. These claims would render her judgement voidable, not void. See State v. Archer, 851 S.W.2d 157, 164 (Tenn. 1993); Passarella v. State, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994).

Therefore, the habeas corpus court was correct in dismissing the petitioner's writ of habeas corpus.

### **Conclusion**

Rule 20 of the Rules of the Court of Criminal Appeals provides:

The Court, with the concurrence of all judges participating in the case, when an opinion would have no precedential value, may affirm the judgment or action of the trial court by memorandum opinion rather than by formal opinion, when:

(1)(a) The judgment is rendered or the action taken in a proceeding before the trial judge without a jury, and such judgment or action is not a determination of guilt, and the evidence does not preponderate against the finding of the trial judge, . . . .

We determine that this case meets the criteria of the above-quoted rule and, therefore, we grant the State's motion filed under Rule 20, and we affirm the judgment of the habeas corpus court.

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JERRY L. SMITH, JUDGE